

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

UNITED STATES OF AMERICA)
)
v.)
) Docket No. 02-cr-57-P-S
COLEMAN J. FENTON, JR.,)
)
)
Defendant.)

ORDER ON DEFENDANT'S MOTION TO VACATE

Before the Court is Defendant's Motion to Vacate (Docket # 123), in which Defendant asks the Court to vacate and reissue its Order of September 18, 2008, "so that an appeal can be taken therefrom." Defendant states that the Clerk's Office did not receive the Notice of Appeal that he drafted and mailed within ten days of entry of judgment.

Because it may not reissue an order solely to permit the filing of a subsequent Notice of Appeal, the Court DENIES Defendant's Motion to Vacate (Docket # 123). See United States v. Rapoport, 159 F.3d 1, 2 (1st Cir. 1998). However, this ruling does not prevent Defendant from filing his Notice of Appeal along with a declaration or notarized statement asserting that his initial Notice was timely filed pursuant to the prisoner mailbox rule. See Fed. R. App. P. 4(c)(1) (submission must "set forth the date of deposit and state that first-class postage has been prepaid.").

SO ORDERED.

/s/ George Z. Singal
Chief U.S. District Judge

Dated this 29th day of January, 2009.